

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

2. The failure to include the petitioner's earnings in her Food Stamp calculations resulted in an overpayment of Food

Stamp benefits during the months of January, February and March of 2002 in the amount of \$852. The petitioner does not dispute the accuracy of income figures used by PATH or the accuracy of the overpayment calculations.

3. The petitioner was notified by letter dated May 23, 2002 that she had received more food stamps than she was eligible for during February and March of 2002 in the amount of \$852. PATH later orally confirmed that the amount was correct but that the calculation of that amount had also included January of 2002 and that it should have been reflected in the notice.

4. The notice sent to the petitioner indicated that the reason for the overpayment was that PATH had not received timely information. At the hearing, PATH indicated that it would stipulate that the error occurred either due to its error or the petitioner's error. It did not allege or seek to prove that the overpayment was intentional of the petitioner's part.

5. The May 23 notice also informed the petitioner that she had to repay the overpayment either by paying the full amount to the Department, repaying part of it and having her

¹ Food stamps are calculated by assessing income from the prior month for payment in the subsequent month. Therefore, there is a two month lag

Food Stamps reduced in the future or having the amount recovered solely through reduction of the amount of her future Food Stamps. She was further notified that if her Food Stamp benefits closed, the overpayment could be recovered through attachment of her future tax refunds. Finally, she was told that she could speak with her worker about this notice and that she had a right to appeal the decision.

6. The petitioner's reaction to this letter was to stop her Food Stamp benefits, to return \$52 in Food Stamp benefits that she had in her possession and to file an appeal. The petitioner asserts that she should not be required to repay the amounts because the overpayment was not her fault. She does not want future Food Stamp benefits because she does not want to have to deal with these kinds of problems.

ORDER

The decision of PATH establishing the overpayment is affirmed.

REASONS

The Vermont Food Stamp regulations, which closely track the federal Food Stamp regulations, provide that an

between the receipt of income and the time it affects the benefit amount.

overpayment is a "federal debt that must be established and collected in accordance with" its rules and those of the federal government.² F.S.M. 273.18a. Claims are divided into three classes: intentional violations, inadvertent household error and agency error. F.S.M. 273.18b. Intentional violation claims may be recouped from current payments of Food Stamps at a rate of 20 percent. Both household error and agency error claims are recouped from current payments at a rate of 10 percent. F.S.M. 273.18f. No recoupments can be made if a person is not on Food Stamps but the new regulations list a number of considerations and possibilities for collecting claims in this event including: offset of restored benefits; lump-sum payments; installment payments; voluntary intercept of unemployment compensation benefits; use of collection agencies; and state and federal tax offsets. 273.18f (3-8).

The petitioner in this matter does not dispute that she would have gotten \$852 less in Food Stamps if her earnings were included in the calculation of her benefits during the appropriate months. There is no reason to determine in this

² New regulations were placed into effect on July 1, 2002. Those regulations will be used to decide this matter since the establishment section is similar and the collection of the claims is entirely in the future.

case whether the overpayment occurred due to the petitioner's or the agency's error since both classes of overpayment must be established and collected in the same way. PATH is required to establish an overpayment and to use collection procedures available under the regulations regardless of fault. Since PATH has taken actions consistent with its regulations, the Board must uphold its decision. 3 V.S.A. § 3091(d), Fair Hearing Rule 17.

It should be noted that under the new regulations if the claim is found to exist at a fair hearing, the petitioner must be notified of the claim again. 273.18e(6). That new notice should contain all the information in the new section 273.18e(3), and should in fairness explain to the petitioner what collection remedies are now available to PATH under its new regulations. The petitioner should also receive written confirmation that the \$52 in Food Stamps she returned has been deducted from the claim.

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